

SENATE MOTION

MR. PRESIDENT:

I move that Engrossed House Bill 1116 be amended to read as follows:

- 1 Page 1, delete lines 1 through 17, begin a new paragraph and insert:
- 2 "SECTION 1. IC 8-1-8.4 IS ADDED TO THE INDIANA CODE AS
- 3 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 4 1, 2002]:
- 5 **Chapter 8.4. Merchant Power Plant Certification and Siting**
- 6 **Sec. 1. As used in this chapter, "brownfield" has the meaning set**
- 7 **forth in IC 13-11-2-19.3.**
- 8 **Sec. 2. (a) As used in this chapter, "merchant power plant"**
- 9 **means an electric generating facility, all or a specific designated**
- 10 **part of which is used for the production and sale of electric energy**
- 11 **exclusively into the wholesale power market to other utilities,**
- 12 **energy service providers, or power marketers within or outside**
- 13 **Indiana.**
- 14 **(b) For purposes of sections 2 through 18 of this chapter, the**
- 15 **term does not include a plant, all or a specific designated part of**
- 16 **which, before becoming a plant (or a specific designated part of a**
- 17 **plant) used for the production and sale of electric energy**
- 18 **exclusively into the wholesale power market, was used to produce**
- 19 **electric energy for sale to retail Indiana customers.**
- 20 **(c) The term does not include plants owned by:**
- 21 **(1) A corporation organized and operating under IC 8-1-13.**
- 22 **(2) A nonprofit Indiana corporation most of whose members**
- 23 **are organized and operating under IC 8-1-13.**
- 24 **(3) A joint agency created and operating under IC 8-1-2.2.**
- 25 **(4) A municipally owned utility.**
- 26 **Sec. 3. As used in this chapter, "need" refers to a commission**
- 27 **finding supported by substantial evidence that:**
- 28 **(1) there is a projected need in the regional power market for**
- 29 **the type of capacity being proposed at or near the time the**
- 30 **proposed merchant power plant is expected to become**
- 31 **commercially operational that will not be met by other supply**

or demand side resources reasonably expected to be available at that time; and

(2) the merchant power plant being proposed is likely to be dispatched with sufficient frequency in the wholesale regional power market over the period of its expected operating life to recover its revenue requirement.

Sec. 4. As used in this chapter, "person" means any of the following:

(1) A corporation.

(2) A company.

(3) A partnership.

(4) A limited liability company.

(5) An individual.

(6) An association of individuals.

(7) The lessees, trustees, or receivers appointed by a court of a person described in any of subdivisions (1) through (6).

Sec. 5. As used in this chapter, "petitioner" refers to a person that files a petition with the commission under this chapter to site a merchant power plant.

Sec. 6. A person that may own, operate, manage, or control a merchant power plant in Indiana is a public utility as defined in IC 8-1-2-1(a).

Sec. 7. (a) A person may not begin to construct a merchant power plant, by significantly altering a site to install permanent equipment or structures, without first filing a petition with, and obtaining approval from, the commission under this chapter.

(b) Absent leave from the commission, a person seeking to construct a merchant power plant must file a petition with the commission under this chapter not later than two hundred seventy (270) days before the date for requested or expected commission action on the petition.

(c) A person filing a petition under this chapter shall publish a notice of the filing in a newspaper of general circulation published in the county in which the proposed merchant plant is to be located.

Sec. 8. (a) The commission may approve the siting of a merchant power plant if the commission determines that the siting of a merchant power plant is not adverse to the interests of:

(1) the citizens of Indiana; and

(2) the citizens in the locality where the merchant power plant is proposed.

Sec. 9. The commission shall consider the following when acting upon any petition by a petitioner under this chapter:

(1) The need for the merchant power plant.

(2) The location of the merchant power plant.

(3) The ownership and transfer of ownership of the merchant power plant.

(4) The management of the merchant power plant.

- (5) The financing of the merchant power plant.
- (6) The capacity of the merchant power plant.
- (7) The type and size of the merchant power plant.
- (8) The type of fuel used by the merchant power plant.
- (9) The merchant power plant's fuel supply arrangements and its effect on the reliability of Indiana's electrical system and the price and availability of the fuel for other uses in Indiana, taking into account the effects of other merchant power plants.
- (10) The merchant power plant's electric supply contracts.
- (11) The merchant power plant's effect on the electric and gas transmission systems serving Indiana.
- (12) The merchant power plant's effect on:
 - (A) water supplies and usage, taking into account the effects of other merchant power plants using the same or interconnected sources of water; and
 - (B) current users of the sources of water.
- (13) Local ordinances and area plans.
- (14) Oral and written testimony received by the commission under section 13 of this chapter.
- (15) The results of the study required under section 21 of this chapter.
- (16) Other factors that the commission considers relevant in making a determination required under this section.

Sec. 10. The petitioner must provide documentation to the commission that it has thoroughly considered the feasibility and economics of the following types of sites:

- (1) Brownfield sites that are isolated from populated areas.
- (2) Sites of existing or former utilities that can be replaced or repowered.
- (3) Other sites identified for power plant and heavy industrial development in local land use plans before the initiation of site selection for the merchant power plant.

Sec. 11. (a) As used in this section, "department" refers to the department of natural resources.

(b) As used in this section, "water resource" has the meaning set forth in IC 14-25-7-8.

(c) When considering whether to approve a merchant power plant, the commission shall obtain a recommendation from the department regarding the merchant power plant's planned use of and its potential effect on the water resource.

(d) To make its recommendation, the department may do the following:

- (1) Rely on the merchant power plant's water resource assessment under subsection (e).
- (2) Consult with and advise users of the water resource.
- (3) Enter upon any land or water in Indiana to evaluate the effect of the merchant power plant on the water resource.

(4) Conduct studies to evaluate the availability and most practical method of withdrawal, development, conservation, and use of the water resource.

(5) Require metering or other reasonable measuring of water withdrawals and reporting of the measurement to the department.

(6) Engage in any other activity necessary to carry out the purposes of this section.

(e) A petitioner shall provide an assessment of the proposed merchant power plant's effect on the water resources and its users to the commission and the department. The assessment must be prepared by a professional hydrogeologist licensed under IC 25-17.6 or an engineer licensed under IC 25-31-1. The assessment must include the following information:

(1) Sources of water supply.

(2) Total amount of water to be used by the merchant power plant for each source.

(3) Location of wells or points of withdrawal.

(4) Ability of the water resource to meet the needs of the merchant power plant and other users.

(5) Ability of the water resource to meet the future needs of the county.

(6) Alternative sources of water supply.

(7) Conservation measures proposed by the petitioner for reducing the plant's effect on the water resource.

Sec. 12. (a) A petitioner must establish proof of financial responsibility by filing one (1) or a combination of the following with the commission as part of the petition:

(1) A fully funded trust fund agreement.

(2) A surety bond with a standby trust fund agreement.

(3) A letter of credit with a standby trust fund agreement.

(4) An insurance policy with a standby trust fund agreement.

(5) Proof that the merchant power plant meets a financial test established by the commission and equivalent to one (1) of the items in subdivisions (1) through (4).

(b) The commission shall determine the amount of financial responsibility that a petitioner must establish under this section. In all cases, the amount must be sufficient, but not more than reasonably necessary, to:

(1) fully decommission the site and remove structures, equipment, and site hazards;

(2) minimize the need for further maintenance and remediation; and

(3) provide for reasonable, foreseeable, and necessary maintenance and remediation after closure for at least (20) years after the merchant power plant ceases operations.

(c) The commission may use:

(1) a trust fund agreement;

- (2) a surety bond;
- (3) a letter of credit;
- (4) an insurance policy; or
- (5) other proof of financial responsibility;

filed under this section for the closure and post-closure monitoring, maintenance, or remediation of a merchant power plant approved by the commission, if the merchant power plant does not comply with closure or post-closure standards established by the commission under subsection (d).

(d) The commission shall adopt rules under IC 4-22-2 to establish criteria for how money in a trust fund agreement, a surety bond, a letter of credit, an insurance policy, or other proof of financial responsibility provided by a merchant power plant meets the standards to decommission the merchant power plant under subsection (b)(1).

Sec. 13. (a) Not later than thirty (30) days after the petitioner has prefiled its testimony before the commission for the siting of a merchant power plant under this chapter, the commission shall conduct a hearing at a location in the county in which the merchant power plant is proposed.

(b) The commission shall send notice of the hearing by first class mail not later than ten (10) days before the hearing to the following:

(1) Relevant state regulatory agencies, as determined by the commission.

(2) Zoning and area plan authorities for the:

(A) county; and

(B) municipality, if any;

where the merchant power plant is proposed.

(3) Record owners of real property located within one-half (0.5) mile of the proposed site for the merchant power plant, except that the commission, in its discretion, may extend the radius up to two (2) miles in sparsely populated areas.

(c) The commission shall publish a notice of the hearing in a newspaper of general circulation in each county in which the merchant power plant is proposed. The publication required under this subsection must occur one (1) time each week for two (2) weeks, with the second publication occurring not later than fifteen (15) days before the date of the hearing.

(d) The commission shall accept written and oral testimony from any person who appears at the public hearing.

(e) The commission shall make a record of the hearing and all testimony received. The commission shall make the record available for public inspection.

Sec. 14. After approval of a petition by the commission, the merchant power plant shall submit the following to the commission:

- (1) A startup report one (1) week before beginning

1 construction activities, including:

2 (A) status of necessary permits; and

3 (B) expected date the plant will come in service.

4 (2) A midpoint report determined by the commission,
5 including:

6 (A) status of construction; and

7 (B) expected date the plant will come in service.

8 (3) A testing notice two (2) weeks before any testing of the
9 merchant power plant.

10 (4) A notice at the time of the initial commercial operation of
11 the merchant power plant, including the following:

12 (A) Contracts for firm utility sales and contracts for firm
13 sales to Indiana utilities.

14 (B) A summary of fuel contracts, including the pipelines
15 involved in the transactions.

16 (C) Contingency plans, if any, detailing response plans to
17 emergency conditions as required by state or local units of
18 government, the transmission owner and the relevant
19 regional transmission grid operator.

20 (D) Certified dependable capacity rating.

21 (5) A first year report not later than thirteen (13) months after
22 the date in the notice provided in subdivision (4), including the
23 following:

24 (A) Summer and winter dependable capacity ratings.

25 (B) Annual capacity factor, including summer and winter
26 seasonal capacity factor.

27 (C) Hours of operation annually for each season.

28 (D) Total annual, peak day, and summer seasonal water
29 usage and discharge.

30 (E) Itemization of transmission load restrictions or other
31 operational restrictions incurred during the year.

32 (F) Number of employees employed by the merchant power
33 plant.

34 (6) Other information requested by the commission.

35 **Sec. 15. After approval of a petition by the commission, the**
36 **petitioner shall do all the following:**

37 (1) Notify the commission upon becoming an affiliate of any
38 regulated Indiana utility selling electricity at retail to Indiana
39 consumers.

40 (2) Obtain prior commission approval with respect to the sale
41 of any electricity to an affiliate that is a regulated Indiana
42 retail utility, except for electricity purchased on the wholesale
43 spot market.

44 (3) Obtain prior commission approval of any transfers of
45 ownership of the merchant power plant or its assets.

46 (4) Obtain prior commission approval with respect to altering
47 the capacity or significantly altering the size of the merchant
48 power plant.

(5) Obtain prior commission approval with respect to altering the type of fuel.

Sec. 16. (a) After notice and hearing, the commission may withdraw its approval for the siting of an approved merchant power plant if the petitioner or subsequent owner or operator:

(1) has failed to begin construction of the merchant power plant within two (2) years of the date of an order for approval and is no longer diligently pursuing the beginning of construction of the merchant power plant; or

(2) has not completed construction of the merchant power plant not later than five (5) years after the date of an order for approval.

Sec. 17. (a) The petitioner or subsequent owner or operator must operate the merchant power plant in accordance with the approval by the commission.

(b) If the commission finds that the merchant power plant is not operating in accordance with the commission's approval, the commission may do either of the following:

(1) Order an investigation.

(2) Revoke the approval after an investigation, a hearing and the conclusion of the appeals process.

Sec. 18. (a) Notwithstanding IC 8-1-2.5-5, the commission may not decline to exercise its jurisdiction under this chapter with respect to a merchant power plant. However, the commission may adopt rules under IC 4-22-2 to establish procedures for the exercise of its jurisdiction under this chapter that differ depending on the type, size, or fuel resource of the merchant power plant.

(b) Whenever the commission substantially declines its jurisdiction under IC 8-1-2 with respect to a merchant power plant and its developer, the developer may not exercise the powers conferred under IC 4-20.5-7-10.5, IC 5-11-10-1(c)(1), IC 6-1.1-8-1, IC 8-1-8-1, or any other rights, privileges or immunities conferred by law on electric utilities assigned service areas under IC 8-1-2.3 on account of their obligation to serve the general public without undue discrimination at regulated rates and charges.

(c) Except as provided by federal law, the commission has sole and exclusive jurisdiction over the siting and location of utility facilities including merchant power plants.

Sec. 19. For the purposes of this chapter, information pertaining to fuel arrangements or contracts or electric sales and contracts are not public records under IC 5-14-3. The petitioner may apply for confidential treatment of such information in accordance with the commission's rules.

Sec. 20. The commission shall direct the state utility forecasting group established under IC 8-1-8.5-3.5 to conduct an annual regional power market study to assess all of the following:

(1) The need for merchant power plant additions in the region.

(2) The effect of merchant power plants on the price of fuels

used by merchant power plants.

(3) The effect of merchant power plants on the price of electricity.

(4) The effect of merchant power plant construction and operation on the deployment of demand side resources regionally and in Indiana.

(5) The amount of merchant power plant capacity contracted to Indiana electric utilities.

(6) The amount of merchant power plant capacity contracted to marketers and electric utilities outside of Indiana.

(7) Other issues the commission considers relevant."

Page 2, delete lines 1 through 16.

Page 7, between lines 14 and 15, begin a new paragraph and insert:

"SECTION 3. [EFFECTIVE JULY 1, 2002] (a) As used in this SECTION, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

(b) A petitioner that files for commission approval of the siting of a merchant power plant before July 1, 2002, is subject to the following after June 30, 2002:

(1) IC 8-1-8.4-6, as added by this act.

(2) IC 8-1-8.4-12, as added by this act.

(3) IC 8-1-8.4-15, as added by this act.

(4) IC 8-1-8.4-16, as added by this act.

(5) IC 8-1-8.4-17, as added by this act.

(6) IC 8-1-8.4-18(b), as added by this act.

(7) IC 8-1-8.4-19, as added by this act.

(b) This SECTION expires July 1, 2006."

Renumber all SECTIONS consecutively.

(Reference is to EHB 1116 as printed February 20, 2002.)

Senator CRAYCRAFT